

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 14-54242

TERRENCE JAMES BANKS, and
TAMIKA LASHON BANKS,

Chapter 13

Judge Thomas J. Tucker

Debtors.

ORDER DENYING DEBTORS' MOTION TO IMPOSE THE STAY

This case is before the Court on Debtors' motion entitled "Motion to Impose Automatic Stay," filed on November 13, 2014 (Docket # 32, the "Motion"). Debtors filed a joint voluntary petition for relief under Chapter 13 on September 8, 2014, commencing this case. Debtors filed two previous Chapter 13 cases, which were pending within the one year preceding the filing of the current case: Case No. 14-51024, filed July 1, 2014 and dismissed on July 10, 2014; and Case No. 14-51903, filed July 21, 2014 and dismissed on August 5, 2014. Under 11 U.S.C.

§ 362(c)(4)(A)(i):

if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case[.]

As Debtors had two bankruptcy cases which were pending and dismissed within one year of this case, the automatic stay did not go into effect upon the filing of this case.

Debtor's Motion seeks to impose the stay under 11 U.S.C. § 362(c)(4)(B). The Motion must be denied, however, because the statute requires that such a motion be filed within 30 days after Debtors filed this case. That deadline was October 8, 2014, and Debtors' Motion was not

filed until November 13, 2014. The Court notes that while this requires that the Motion be denied, it does not preclude the Debtors from seeking injunctive relief equivalent to the automatic stay through their proposed Chapter 13 plan, as noted below.

Accordingly,

IT IS ORDERED that the Motion (Docket # 32) is denied. This Order is without prejudice to Debtors' right to propose and seek to confirm a Chapter 13 plan that imposes an injunction equivalent in effect to the automatic stay, on a post-confirmation basis. *See generally* 11 U.S.C. § 1322(b)(11); Fed.R.Civ.P. 7001(7).

Signed on November 14, 2014

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge